STATE OF NEW YORK

5234

2017-2018 Regular Sessions

IN ASSEMBLY

February 7, 2017

Introduced by M. of A. DINOWITZ -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the general business law, in relation to the operations of credit services businesses

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 458-a of the general business law is amended by adding a new subdivision 3 to read as follows:

3. This article shall be construed liberally to achieve these purposes.

§ 2. Section 458-b of the general business law, as added by chapter 386 of the laws of 1986, paragraph (a) of subdivision 1 as amended by chapter 549 of the laws of 2013, is amended to read as follows:

§ 458-b. Definitions. As used in this article:

1. "Credit services business" means any person who sells, provides, or performs, or represents that he can or will sell, provide or perform, a service for the express or implied purpose of improving a consumer's credit record, history, or rating or providing advice or assistance to a consumer with regard to the consumer's credit record history or rating in return for the payment of a fee **or other valuable consideration**.

"Credit services business" does not include any of the following:

(a) Any charitable corporation as defined in paragraph (a) of section one hundred two (Definitions) of the not-for-profit corporation law licensed pursuant to article [~~twelve-c~~] **twelve-C** of the banking law.

(b) Any person admitted to practice law in this state where the person renders services within the course and scope of his or her practice as an attorney at law.

(c) Any person holding a license to make loans or extensions of credit pursuant to the laws of this state or the United States who is subject to regulation and supervision with respect to the making of those loans or extensions of credit by an official or agency of this state or the

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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United States and whose business is the making of those loans or extensions of credit.

(d) Any bank, trust company, savings bank, savings and loan association, or credit union, whether incorporated, chartered, or organized under the laws of this state or any other state or the United States, or any operating subsidiary of any such bank, trust company, savings bank, savings and loan association, or credit union.

2. "Consumer" means any natural person who is solicited to purchase or who purchases the services of a credit services business.

3. "Extension of credit" means the right to defer payment of debt or to incur debt and defer its payment, offered or granted primarily for personal, family, or household purposes.

4. "Person" includes an individual, corporation, partnership, joint venture, or any business entity.

[~~4.~~] 5. The terms "consumer reporting agency", "consumer report", "investigative consumer report", "file", and "adverse information" shall have the meanings ascribed to each by section three hundred eighty-a of this chapter.

§ 3. Section 458-c of the general business law, as added by chapter 386 of the laws of 1986, is amended to read as follows:

§ 458-c. Information statement; procedure. 1. Prior to the execution of a contract between a consumer and a credit services business, the credit services business shall provide the consumer an information statement in writing, on a separate sheet, containing the information required by section four hundred fifty-eight-d of this [~~chapter~~] article. The consumer shall acknowledge receipt of such information statement by placing his or her signature on the face thereof. The credit services business shall maintain on file [~~or~~], microfilm or electronic media for a period of two years from the date of such acknowledgement an exact copy of such information statement.

2. In addition to the requirements of subdivision one of this section, in any oral communication during which a consumer pays or agrees to pay for the services of a credit services business, before the consumer pays or agrees to pay for such services, whichever occurs first, the credit services business shall orally disclose in a clear and conspicuous manner to the consumer the following statements or substantially similar statements:

(a) you have the right to obtain a free copy of your credit report once every twelve months from each of the nationwide credit reporting agencies;

(b) you may, on your own, dispute inaccurate information in your credit report by contacting a credit reporting agency directly;

(c) neither you nor any business or organization has the right to have accurate, current, and verifiable information removed from your credit report; and

(d) you have the right to cancel your contract with any credit services business for any reason within five business days from the date you sign the contract.

§ 4. Section 458-d of the general business law, as added by chapter 386 of the laws of 1986, is amended to read as follows:

§ 458-d. Information statement; contents. The information statement shall be printed in at least ten point type and shall include the following[~~:~~

~~"RIGHT TO REVIEW YOUR FILE"~~

~~"The Federal Fair Credit Reporting Act gives you the right to know what your credit file contains, and the consumer reporting agency must provide someone to help you interpret the data. The New York Fair Credit Reporting Act gives you the right to receive an actual copy of your credit report. You will be required to identify yourself to the consumer reporting agency and you may be charged a small fee. There is no fee, however, if you have been turned down for credit, employment, or insurance because of information contained in a report within the preceding thirty days."~~

~~"INCORRECT INFORMATION"~~

~~"Consumer reporting agencies are required to follow reasonable procedures to ensure that subscribing creditors report information accurately. However, mistakes may occur.~~

~~When you notify the consumer reporting agency in writing that you dispute the accuracy of information, it must reinvestigate and modify or remove inaccurate data. The consumer reporting agency may not charge any fee for this service. Any pertinent data you have concerning an error should be given to the consumer reporting agency.~~

~~If reinvestigation does not resolve the dispute to your satisfaction, you may enter a statement of one hundred words or less in your file, explaining why you think the record is inaccurate.~~

~~The consumer reporting agency must include your statement about disputed data -- or a coded version of it -- with any reports it issues about you. New York law also provides that, at your request, the consumer reporting agency must notify any person who has received a report in the previous year that an error existed and furnish such person with the corrected information."~~

~~"TIME LIMITS ON ADVERSE DATA"~~

~~"Most kinds of information in your file may be reported for a period of seven years. If you have declared personal bankruptcy, however, that fact may be reported for ten years.~~

~~After seven years or ten years, the information can't be disclosed by a credit reporting agency unless you are being investigated for a credit application of $50,000 or more, for an application to purchase life insurance of $50,000 or more, or for employment at an annual salary of $25,000 or more."~~] notice. Paragraph headings shall be capitalized and printed in fourteen point bold type.

"IMPORTANT NOTICE REGARDING CREDIT SERVICES"

"You have a right to dispute inaccurate information in your credit report by contacting a credit reporting agency directly. However, neither you nor any business or organization has the right to have accurate, current, and verifiable information removed from your credit report. Most kinds of information may be reported for a period of seven years. If you have declared personal bankruptcy, however, that fact may be reported for ten years."

"RIGHT TO REVIEW YOUR CREDIT REPORT"

"You have a right to obtain a free copy of your credit report once every twelve months from each of the nationwide credit reporting agencies. To request your free annual credit report, you may go to www.annualcreditreport.com, or call 877-322-8228, or complete the Annual

Credit Report Request Form and mail it to: Annual Credit Report Request Service, P.O. Box 105281, Atlanta, GA 30348-5281. You can obtain additional copies of your credit report from a credit reporting agency, for which you may be charged a reasonable fee. There is no fee, however, if you have been turned down for credit, employment, insurance, or a rental dwelling because of information in your credit report within the preceding sixty days. The credit reporting agency must provide someone to help you interpret the information in your credit file. You are entitled to receive a free copy of your credit report if you are unemployed and intend to apply for employment in the next sixty days, if you are a recipient of public welfare assistance, or if you have reason to believe that there is inaccurate information in your credit report due to fraud."

"INCORRECT INFORMATION"

"Credit reporting agencies are required to follow reasonable procedures to ensure that the information they report is accurate. However, mistakes may occur."

"You may, on your own, notify a credit reporting agency in writing that you dispute the accuracy of information in your credit file. The credit reporting agency must then reinvestigate and modify or remove inaccurate or incomplete information. The credit reporting agency may not charge any fee for this service. Any pertinent information and copies of all documents you have concerning an error should be given to the credit reporting agency."

"If the credit reporting agency's reinvestigation does not resolve the dispute to your satisfaction, you may send a brief statement to the credit reporting agency, to be kept in your report, explaining why you think the record is inaccurate. The credit reporting agency must include a summary of your statement about disputed information with any report it issues about you."

"YOUR RIGHTS REGARDING CREDIT SERVICES BUSINESSES"

"You have the right to cancel your contract with any credit services business for any reason within five business days from the date you signed it."

"You have a right to sue a credit services business that misleads you or violates New York state or federal laws that prohibit deceptive practices."

"The Federal Trade Commission and the New York Attorney General regulate credit reporting agencies and credit services businesses. For more information, contact the Federal Trade Commission at (insert the current telephone number established by the federal trade commission for receiving inquiries from consumers) or (insert the current address of the website of the federal trade commission). You may also contact the New York Attorney General at (insert the current telephone number established by the department of law for receiving inquiries from consumers) or (insert the current address of the website of the department of law)."

§ 5. Section 458-e of the general business law, as added by chapter 386 of the laws of 1986, is amended to read as follows:

§ 458-e. Advance fees prohibited. It is hereby declared to be an unfair and deceptive trade practice and unlawful for a credit services business to: 1. receive or collect from a consumer any fee or other valuable consideration in advance of the performance of those services specified in the contract as required by section four hundred fifty-eight-f of this [~~chapter~~] article; or

2. fail to perform the agreed services within six months following the date the consumer signs the contract for those services.

§ 6. Section 458-f of the general business law, as added by chapter 386 of the laws of 1986, is amended to read as follows:

§ 458-f. Contracts; requirements and contents. 1. Every contract between a consumer and a credit services business shall be in writing, shall be dated, shall contain the street address of the credit services business and the consumer, and shall be signed by the consumer and credit services business. Each contract shall contain the following:

(a) A complete and detailed statement of the services to be performed and the results to be achieved by the credit services business for or on behalf of the consumer, including a list of the adverse information appearing on the consumer's credit report that will be modified, a description of the precise nature of each modification, and the estimated date by which each modification will occur. A copy of the consumer's current credit report issued by a consumer credit reporting agency shall be annexed to the contract with the adverse entries proposed to be modified clearly marked.

(b) A statement in at least ten point type as follows:

"Under New York law no fee may be collected in advance of performance of the services specified in this contract."

2. The contract shall be accompanied by a completed form in duplicate, captioned "Notice of Cancellation," which shall be attached to the contract and easily detachable, and which shall contain in at least [~~ten~~] **twelve** point type the following:

"Notice of Cancellation"

"You may cancel this contract, without any penalty or obligation, within [~~three~~] **five** days from the date the contract is signed.

"To cancel this contract, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice,
to _____ at
(name of seller)
_____
(address of seller) (Place of business)
not later than midnight_____.
(date)

"I hereby cancel this transaction."

_____
(purchaser's signature)

_____
(date)

3. A copy of the fully completed contract and all other documents shall be given to the [~~buyer~~] **consumer** at the time the contract is signed.

4. Any consumer shall have the right to cancel a contract with a credit services business without penalty or obligation by notifying the credit services business of the consumer's intention to do so at any time before midnight of the fifth business day which begins after the date on which the contract or agreement between the consumer and the credit services business is executed or would, but for this section, become enforceable against the parties.

5. No services may be provided under the contract before the end of the five business days beginning on the date the contract is signed.

§ 7. Section 458-h of the general business law, as added by chapter 386 of the laws of 1986, subdivision 3 as added by chapter 725 of the laws of 1991, is amended to read as follows:

§ 458-h. Deceptive acts prohibited. It is hereby declared to be an unfair and deceptive trade practice and unlawful for a credit services [~~company~~] **business** to:

1. Misrepresent directly or indirectly in its advertising, promotional materials, sales presentation, or in any manner: the nature of the services to be performed; the time within which services will be performed; the ability to improve a consumer's credit report or credit rating; the amount or type of credit a consumer can expect to receive as a result of the performance of the services offered; the qualifications, training or experience of its personnel.

2. Make or counsel or advise any consumer to make any statement which is untrue or misleading and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading, to a consumer credit reporting agency or to any person who has extended credit to a consumer or to whom a consumer is applying for an extension of credit, with respect to a consumer's credit worthiness, credit standing, or credit capacity.

3. Represent directly or indirectly in its advertising, promotional materials, sales presentation, or in any manner that it can procure or obtain a credit card for a consumer unless that credit services [~~company~~] **business** has authority to issue the credit card being advertised.

4. Charge or receive any money or other valuable consideration for referral of the consumer to a retail seller or other credit grantor who will or may extend credit to the consumer, if either of the following applies:

(a) The credit that is or will be extended to the consumer (i) is upon substantially the same terms as those available to the general public or (ii) is upon substantially the same terms that would have been extended to the consumer without the assistance of the credit services business.

(b) The money or consideration is paid by the credit grantor or is derived from the consumer's payments to the credit grantor for costs, fees, finance charges, or principal.

5. Make, or counsel or advise a consumer to make, a statement that is untrue or misleading and that is known, or that by the exercise of reasonable care should be known, to be untrue or misleading, to a credit reporting agency or to a person who has extended credit to a consumer or to whom a consumer is applying for an extension of credit, such as statements concerning a consumer's identification, home address, creditworthiness, credit standing, or credit capacity.

6. Remove, or assist or advise the consumer to remove, adverse information from the consumer's credit record which is accurate and not obsolete.

7. Create, or assist or advise the consumer to create, a new credit record by using a different name, address, social security number, or employee identification number.

8. Fail to maintain an agent for service of a process in this state.

9. Submit a consumer's dispute to a consumer credit reporting agency without the consumer's knowledge.

10. Use a consumer credit reporting agency's telephone system or toll-free telephone number to represent the caller as the consumer in submitting a dispute of a consumer or requesting disclosure without prior authorization of the consumer.

11. Directly or indirectly extend credit to a consumer.

12. Refer a consumer to a credit grantor that is related to the credit services business by a common ownership, management, or control, including a common owner, director, or officer.

13. Refer a consumer to a credit grantor for which the credit services business provides, or arranges for a third party to provide, services related to the extension of credit such as underwriting, billing, payment processing, or debt collection.

14. Provide a credit grantor with an assurance that a portion of an extension of credit to a consumer referred by the credit services business will be repaid, including providing a guaranty, letter of credit, or agreement to acquire a part of the credit grantor's financial interest in the extension of credit.

15. Use a scheme, device, or contrivance to evade the prohibitions contained in this article.

§ 8. Section 458-i of the general business law, as added by chapter 386 of the laws of 1986, is amended to read as follows:

§ [~~458-i.~~] 458-j. Action for recovery of damages by consumer. Any consumer injured by a violation of this article or by the breach by the credit services business of a contract which has been entered into pursuant to section four hundred fifty-eight-f of this [~~chapter~~] article may bring an action for recovery of damages. Judgment shall be entered in favor of a consumer in an amount not to exceed three times the actual damages, but in no case less than the amount paid by the [~~buyer~~] consumer to the credit services business. The court may award reasonable attorney's fees to a prevailing plaintiff.

§ 9. Section 458-k of the general business law is renumbered section 458-n and section 458-j of the general business law, as added by chapter 386 of the laws of 1986, is amended to read as follows:

§ [~~458-j.~~] 458-k. Enforcement by attorney general. In addition to the other remedies provided, whenever there shall be a violation of this article, application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction by a special proceeding to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violations; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this article, an injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules, and direct restitution. Whenever the court shall determine that a violation of this article has occurred, the court may impose a civil penalty of not more than [~~one~~] two thousand five hundred dollars for each violation. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

§ 10. The general business law is amended by adding two new sections 458-l and 458-m to read as follows:

§ 458-l. Assisting and facilitating. It is hereby declared to be unlawful for a person to provide substantial assistance or support to any credit services business when that person knows or consciously avoids knowing that the credit services business is engaged in any act or practice that violates this article.

§ 458-m. Subsequent violations. A second or subsequent violation of sections four hundred fifty-eight-e or four hundred fifty-eight-h of this article shall be a class A misdemeanor. Each such violation may be

prosecuted by the attorney general or the district attorney in the county in which the violation is alleged to have occurred.

§ 11. This act shall take effect on the ninetieth day after it shall have become a law; provided, however that effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date is authorized and directed to be made and completed on or before such effective date.